IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.121 SB OF 1995

DATE OF DECISION: MARCH 28, 2007

Kitab Singh and another

.....Appellants

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rajesh Chaudhary, Advocate,
for the appellants.

Mr. Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

Appellants Kitab Singh and Ram Juwari, challaned under Sections 302, 325, 34 IPC, were convicted for an offence under Section 304 Part II/34 IPC and 325/34 IPC. Both were sentenced to suffer 7 years RI and fine of Rs.500/- for an offence under Section 304 Part II. They were directed to undergo RI for 2 months in default of payment of fine. The appellants were also to undergo RI for 1 year and fine of Rs.100/- for their conviction under Section 325 IPC and 10 days RI in default of payment of fine. They are presently in appeal before this Court against the order of conviction and sentence passed against them.

A minor dispute over water had led to the trial and conviction as afore-mentioned. The appellants, residents of Village Lochab, installed a hand-pump in their `***Ghair'.*** The discharge of water was passing through the `***Ghair'*** of the complainant, who raised objection in this regard. Even on being asked, the appellants did not agree to mend the same. On 5.5.1992, son of the complainant closed the drain (***nali)*** through which the water was entering into their `***Ghair'.*** He also informed the appellants in this regard and told them not to re-open the same. Upon this, the appellants started abusing son of the complainant who, in turn, abused him back. The appellants are alleged to have brought lathis from their house and gave a blow, which hit on the head of Krishan, son of the complainant. Krishan fell down, when appellant No.2 gave lathi blow on his nose. The complainant intervened and as a result, he also received two blows with lathis, one each from the appellants, on his left arm and right shoulder. Thereafter, the appellants retreated to their house. The injured was taken to General Hospital, Jind from where he was referred to M.C.H., Rohtak but there he succumbed to injuries on 6.5.1992. The trial Court having regard to the evidence and nature of injuries etc. came to conclude that it is a case of sudden fight over a minor issue. It is also noticed that there was no previous enmity and even as per the prosecution only one blow with lathi was given, which incidentally landed on the head of the victim. Accordingly, the trial Court did not find the appellants guilty of offence under Section 302 IPC but instead convicted them under Section 304 Part II IPC and sentenced them as already noticed.

I have heard the learned counsel for the appellants and the State.

Learned counsel for the appellants has not raised any contention on merits of the case. He has, however, pleaded for release of the appellants on probation. The counsel points out that the incident is of the year 1992 and the appellants stand convicted for those offences since 1995. Their appeal is pending for the last about 12 years. The appellants have, in all, faced prosecution and trial for a period of nearly 15 years. Counsel would say that asking the appellants to undergo sentence at this stage would be rather harsh, especially so when they had not given any cause of complaint for all these years. He prays that the appellants be released on probation. In support of his submission, the counsel has placed reliance on ***State of Karnataka Vs. Muddappa***, (1999) 5 Supreme Court Cases 732 where the Hon'ble Supreme court has adopted such a course and directed the release of offender on probation after his conviction under Section 304 Part II IPC. The Hon'ble Supreme court in this case has held that there is no statutory bar for application of the Act to an offence under Section 304 Part II IPC, where the maximum punishment is neither death nor imprisonment for life. It was also observed by the Hon'ble Supreme Court that the benefit of the Probation of Offenders Act in any particular case would depend upon circumstances of that case. No doubt, the Hon'ble Supreme Court in the case of Muddappa (supra) did not see any infirmity, which could call for interference by the Court after such a long time but each case is required to be decided on its own facts. The sentence awarded to the appellants may appear to be dis-

proportionate to the nature and gravity of the allegations but certainly is not a case, which may call for release of the appellants on probation. Accordingly, I am not inclined to accept the prayer of the appellants for their release on probation but at the same time would say that the sentence, as awarded, certainly appears to be harsh and dis-proportionate to the nature of the offence and the allegations.

Accordingly, while up-holding the conviction of the appellants for the offence alleged against them, the sentence of 7 years RI awarded to them, is reduced to 3-1/2 years RI under Section 304 Part II/34 IPC. However, no interference is called for so far as sentence of 1 year RI under Section 325/34 IPC and fine is concerned. Both the sentences shall run concurrently. It is apparent from the record that the appellant is on bail. They are accordingly directed to surrender before the Chief Judicial Magistrate, Jind, to undergo the remaining portion of sentence.

With the above modification in the sentence, the appeal is dismissed.

March 28, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**